Estates and Interests in Real Property

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Possessory Estates

- Fee Simple
- Fee Tail
- Defeasible Fee
- Life Estates
Possessory Estates – Fee Simple

- No Special Words Required

By statute, every conveyance or devise is presumed to create a fee simple estate unless the transferor’s intent to create a lesser estate is clearly expressed in the instrument. As language “and his heirs” to convey a fee simple estate. *N.C. Gen. Stat. §39-11.*
Example:
O conveys “to A.” Although at common law, A would have received only a life estate due to the omission of the words “and his heirs,” the statute results in A receiving the property in fee simple.
Possessory Estates – Fee Simple

- **Effect of Rule in Shelley’s Case:**
  By statute, North Carolina has abolished the *Rule in Shelley’s Case*. The statute’s operation, however, is prospective only; therefore, title transactions that took effect prior to October 1, 1987 remain subject to the rule.
Example:
O conveys “to A for life, then to A’s heirs.” If the deed took effect on or after October 1, 1987, A receives only a life estate and his heirs have a contingent remainder in fee simple. If, however, the deed took effect prior to October 1, 1987, the rule would apply, with the result that A would receive both the life estate and the remainder in fee simple; these two estates would then merge, and A would be deemed to hold title in fee simple and not merely for life.
North Carolina has effectively abolished the fee tail estate by virtue of a statute that provides that any person who would be seised of an estate in tail is deemed to be seised of an estate in fee simple. *N.C. Gen. Stat. §41-1.*
Example 1:
O conveys “to A and the heirs of his body.” Although at common law A would have received merely a fee tail (and O would have retained a reversion), today as a result of the statute, A receives the property in fee simple.
Example 2:
O devises property "to A and his children." Such a devise triggers application of the Rule in Wild’s Case. If at the time the will becomes effective A has one or more children, A and such child(ren) will share the title in fee simple as tenants in common. However, if at the time the will becomes effective, A has no children, A takes the property in fee tail; then, application of the statute results in A holding title in fee simple.
Possessory Estates – Defeasible Fee

- Three types of defeasible fee:
  - Fee Simple Determinable
  - Fee Simple on Condition Subsequent
  - Fee Simple Subject to Executory Limitation
Possessory Estates – Defeasible Fee
Fee Simple Determinable

- Fee Simple Determinable is created when words of duration ("while," "so long as," "until," etc.) are used to limit the estate in connection with a specified event.
- Example: O conveys "to A as long as the premises are used for residential purposes only, and when the property is no longer so used, property shall revert to the grantor." A has a fee simple determinable. O, the grantor, has a possibility of reverter.
- Possibility of reverter must be expressly retained.
Fee Simple on Condition Subsequent is created by (1) language of condition ("provided that," "on condition that," etc.) together with an express right of entry or power of termination or (2) language providing that the conveyance is "to be null and void if" or is "to be forfeited if" a certain event occurs or fails to occur,
Example:

O conveys “to A on condition that the premises be used for residential purposes only, and if the premises are ever used otherwise, the grantor shall have the right to reenter and repossess the premises.” A has a fee simple on condition subsequent. O, the grantor, has a right of entry/power of termination.
Possessory Estates – Defeasible Fee

Fee Simple on Condition Subsequent

- **Language of Motive**
  
  A clause in a deed will not be construed as a condition subsequent unless it clearly expresses that this is the intent of the parties. A mere statement of the motive that induced the grantor to execute the deed is not sufficient to create a condition subsequent.
For Discussion:

O conveyed a tract of land to a church. The last line of the habendum clause in the deed contained the language “for church purposes only.”

What kind of title did the church acquire from O?
Termination of Estate

- Fee Simple on Condition Subsequent does not terminate unless and until the grantor exercises his right of entry or power of termination

AS OPPOSED TO:

- Fee Simple Determinable, which ends automatically on breach of the condition
Possessory Estates – Defeasible Fee
Fee Simple Subject to Executory Limitation

- Provides that upon the happening of a specified event, the title will shift to a third party

Example:
O conveys property “to A, but if A dies without having married, then to B.” (B has executory interest)
Possessory Estates – Defeasible Fee
- Illegal or Void Conditions

- When the estate granted is defeasible, but the condition or event that would terminate it is illegal or against public policy, the estate is indefeasible as a result of the court’s refusal to enforce it.
  - Restraint on Marriage
  - Restraint on Alienation of Property
Possessory Estates – Defeasible Fee
- Illegal or Void Conditions

- **Example:**
  O conveys property “to A on condition that she not marry, but if she does, the estate will terminate and title will revert to the grantor.”

  BUT: A Partial restraint on marriage is not void if it is incidental to another lawful purpose, such as providing for a surviving spouse only until remarriage.
A possibility of reverter, right of entry, or executory interest created on or after October 1, 1995 becomes invalid and the defeasible fee simple that precedes it becomes a fee simple absolute if:

- Future interest depends on an event affecting the use of the land, and
- The future interest does not actually vest in possession within 60 years after its creation.
Possessory Estates – Defeasible Fee Statutory Time Limitation

- N.C. Gen. Stat. §41-32
- This rule does not apply to interests held by a charity, a government or governmental agency, or to an arrangement relating solely to an interest in oil, gas, or minerals.
Life Estates

- Language creating life estate:

  O conveys property “to A for life” or any other language that makes it clear the estate is to last only for the lifetime of the grantee (A). O has a remainder interest.

  O conveys property “to A for the life of B” creates life estate *pur autre vie* (for the life of another).
Life Estates
Rights of Life Tenant

- Entitled to all ordinary uses and profits from the land, as long as such use does not constitute waste.
- Right to Alienate – Life tenant may transfer interest in the property for any period that does not exceed the life interest – the transferred interest will terminate upon the death of life tenant or the measuring life.
Life Estates
Rights of Life Tenant

- Right to Convey Fee Simple – Life tenant may convey fee simple interest in the property only if given the power to do so, although life tenant’s interest in the property remains limited to the life estate. Thus, if property is sold, life tenant is only entitled to value of the life estate, not value of the whole property.
Life Estates
Rights of Life Tenant

- Right to Exploit Natural Resources
  Generally, life tenant does NOT have right to exploit such resources (timber, minerals, etc.)

  Exceptions:
  a. In reasonable amounts as necessary for repair and maintenance of the property;
  b. If expressly granted in the grant of the life estate;
  c. If such resources were exploited prior to the grant of the life estate and grantor is considered to have intended that life tenant have the right to continue such exploitation.
Life Estates
Duties of Life Tenant

- Ordinary repairs vs. permissive waste
- No obligation to make permanent improvements, no right to reimbursement or contribution
- No duty to pay special assessments
- Affirmative duty to pay property taxes or reimburse remainderman/reversioner
- Interest on encumbrances up to income or annual rental value of the property
Concurrent Ownership

- Tenancy in Common
- Joint Tenancy
- Tenancy by the Entirety
Concurrent Ownership
Tenancy in Common

- Created when property is conveyed to two or more persons with language sufficient to show grantor intended the parties to have undivided interests in the property.
- Also created when property is inherited by the heirs of an intestate decedent.
Concurrent Ownership
Tenancy in Common

O conveys “to A and B”
O conveys “to A and B Equally”
O devises “to A and B”
O dies intestate and property is inherited by A and B
Concurrent Ownership Rights of Tenants in Common

- **Right to Alienate**
  - Each tenant is free to convey, lease, or mortgage his interest in the common property
  - Tenant’s share is inheritable under will or by intestate succession.

- **Possession and Profits**
  - Each tenant is entitled to use and occupy all of the property, but must not exclude co-owners (ouster), no compensation required, must account for profits
  - If ouster occurs, ousted tenant may take legal action to restore possession and recover damages.
Concurrent Ownership
Rights of Tenants in Common

- Right to Partition
  - Unless waived by agreement, each co-tenant is entitled to obtain partition of the common property and own his share in severalty.
  - Partition in kind – actual physical division of the land into separate tracts
  - Partition by sale – sale of the entire property, with proceeds divided among co-tenants according to their fractional interests.
  - Co-tenant may waive right to partition for a reasonable time, either by an express or implied contract.
Concurrent Ownership
Joint Tenancy

- Grantor must use language in conveyance document that expressly provides for creation of a joint tenancy
- O conveys “to A and B as joint tenants”
- Otherwise, presumed to be tenancy in common
Concurrent Ownership
Joint Tenancy – Inheritability

- Generally the same as for tenancy in common, except when right of survivorship has been created.
- Interest of a deceased joint tenant is inheritable by heirs or beneficiaries, with a few exceptions:
  - Joint tenancy for business for profit
  - Joint tenancy for life
  - Tenancy by the entirety
  - If document creating joint tenancy expressly provides for right of survivorship
Concurrent Ownership
Joint Tenancy – Rule of Severance

- Where property is owned by 3 or more persons in joint tenancy with right of survivorship, conveyance by one joint tenant to another party creates tenancy in common between the new party and the existing co-tenants. Two original co-tenants remain joint tenants with right of survivorship with each other.
Concurrent Ownership
Tenancy by the Entirety

- Unless grantor’s intent to vest title is otherwise expressly indicated, title will vest as tenants by the entirety when conveyance is to:
  - Named man “and wife”
  - Named woman “and husband”
  - Parties identified as “husband and wife”
  - Parties who are legally married at the time of conveyance, whether or not identified as such
Concurrent Ownership
Tenancy by the Entirety

- However, can rebut presumption of tenancy by entirety if specific language provides they are to hold title otherwise:
  - O conveys “to A and B as tenants in common”
  - O conveys “to A and B to share equally’
  - O conveys “to A and B, each a one-half interest”

- Conveyance of property by husband or wife to husband and wife creates tenancy by the entirety unless language provides otherwise.
Concurrent Ownership
Tenancy by the Entirety

- Marital Gift Presumption
  - If one spouse uses separate funds to purchase property, property will be presumed to be a gift to the marital estate if titled as tenancy by the entirety.
  - This presumption is rebuttable only by clear, cogent and convincing evidence that such a gift was not intended.
Concurrent Ownership
Tenancy by the Entirety

- Property owned with third persons
  - O conveys to “A, B, and C”
  - If A and B are married, they take a ½ undivided interest as tenant in common with C (A and B are considered one tenant in common; C is the other tenant in common)
  - A and B own the ½ undivided interest as tenants by the entirety
Concurrent Ownership
Tenancy by the Entirety

● Right of Survivorship
  - Upon death of one spouse, whole estate belong to the other by virtue of survivorship. Neither spouse can transfer or encumber the property so as to defeat the other spouse’s right of survivorship.

● Right to Alienate
  - Neither spouse may sell, lease, mortgage, convey or encumber any property held in tenancy by the entirety without written joinder of the other spouse.
Concurrent Ownership
Tenancy by the Entirety

- Equal rights to rents and profits
- No right to reimbursement for expenses, unless divorce occurs; then, may assert claim for reimbursement of sums spent to reduce marital debt on the property after the divorce
Concurrent Ownership
Tenancy by the Entirety

- Rights of Creditors
  - Property held by H and W as tenants by the entirety not subject to levy under execution on a judgment obtained against only one spouse.
  - If creditor secures judgment against both spouses, then property is subject to levy to satisfy judgment.
  - ONLY EXCEPTION: Federal Income Tax Lien – a federal income tax lien against one spouse will attach to that spouses’ interest in the property owned as tenants by the entirety.
Concurrent Ownership
Tenancy by the Entirety

- Termination of Tenancy by the Entirety
  - Death of one spouse – whole estate belongs to the surviving spouse
  - Divorce – automatically converts tenancy by the entirety to tenancy in common. Legal separation does NOT terminate tenancy by the entirety.
Leasehold Estates

- Estate for Years
- Periodic Tenancies
- Tenancy at Will
Leasehold Estates
Estate for Years

- Fixed term
- Ends automatically at end of term
- If more than 3 years, must be in writing
- If more than 3 years, must be recorded (to protect leasehold interest from Landlord’s creditors or purchasers)
Leasehold Estates

Periodic Tenancies

- Continues to renew itself for successive like periods until properly terminated by notice.
- Parties may expressly agree tenancy is periodic – “to hold from year to year”
- If term is not specified but provides for periodic payments, periodic tenancy is implied
- Tenant holdover after expiration of a fixed term lease, accompanied by continuing payments which are accepted by the landlord, creates a periodic tenancy of term same as original term unless otherwise specified.
Termination

- Periodic tenancy continues until one of the parties gives proper notice:
  - Year-to-year – one month notice required
  - Month-to-month – one week notice required
  - Week-to-week – 2 days notice required
  - If lease is for space for manufactured home, 30 days notice required, regardless of term of lease

- Oral notice is sufficient to terminate a periodic tenancy
Leasehold Estates
Tenancy at Will

- Held at the pleasure of both landlord and tenant and can be terminated at any time by either party.
- “Until you want to leave for any reason”
- “Until I rent or sell the premises”
- Implied when:
  - Tenant is allowed to take possession while parties are negotiating or preparing to execute a lease that is actually never completed or executed
  - Tenant takes possession under a lease invalid under the Statute of Frauds, but has not yet made a payment accepted by the Landlord
- Can be terminated at any time by any party by express notice or conduct inconsistent with tenancy continuing
Easements

- Easements are created by:
  - Express grant or reservation
  - Implication
  - Prescription
  - Dedication
  - Estoppel
Easements

- **Express grant or reservation**
  - Must be in writing
  - No specific language is necessary, but document should describe
    - The easement being created
    - Dominant tenement (benefited by the easement)
    - Servient tenement (encumbered by the easement)
Easements

- Implication
  - Arising from prior use
    - Physical conditions and prior use of the property indicate that grantor intended grantee to have the right to use the tract in the same manner and to the same extent that grantor used it
  - Arising by necessity – two conditions must be met:
    - Dominant tract and servient tracts were held in common ownership that ended by transfer of part of the land, and
    - As a result of such transfer, part of the land no longer has access to a public road unless an easement is granted.
Easements

- Prescription – acquiring intangible rights in the land of another

- Four elements must be proven by greater weight of the evidence:
  - Use of land was adverse, hostile, or under claim of right
  - Use of land was open and notorious
  - Use was continuous and uninterrupted for 20 years
  - Substantial identity of the easement throughout the 20 years
Easements

- **Dedication**
  - Appropriation of land by the owner for some public use.
  - May be express or implied
  - Two conditions must be met:
    - The owner must clearly indicate the *intent to dedicate* by words or conduct and
    - There must be an *acceptance of the offer* in a legalized manner by the public through the proper public authorities.
  - Once these conditions are met, the dedication is irrevocable.
Easements

- **Estoppel**
  - Where lots are sold or conveyed by reference to a map or plat that depicts streets, parks, playgrounds, etc. within a development, the purchaser of a lot located in the development acquires an easement appurtenant in such areas.
  - Such easement arises because its existence was an inducement to and part of the consideration for the purchase of the lot.
Adverse Possession

- Against the State
  - Certain state land is exempt
    - Public roads
    - Property subject to public use rights
      - Without color of title, action must be brought within 30 years
      - With color of title, action must be brought within 21 years
- Against an individual
  - Without color of title, action must be brought within 20 years
  - With color of title, action must be brought within 7 years.
- What is color of title?
In North Carolina, all contracts to sell or convey land are void unless the contract, or some memorandum thereof, is put in writing and signed by the party to be charged or some person authorized by him.

Essential elements:
- Adequate description of the property
- Names of the vendor and vendee
- Signature of the party to be charged
- Purchase price